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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/614,790	07/12/2000	Sharon F. Kleyne	HME/7982.001	2570

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HOWARD EISENBERG, ESQ.
2206 APPLEWOOD COURT
PERKASIE, PA 18944

EXAMINER	
WANG, SHENGJUN	

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/614,790	KLEYNE, SHARON F.	
	Examiner	Art Unit	
	Shengjun Wang	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *90-101* is/are pending in the application.

4a) Of the above claim(s) *94-96* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *90-93 and 97-101* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *10/11/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Receipt of applicants' amendments and remarks submitted September 8, 2005 is acknowledged.

Claim Rejections 35 U.S.C. 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 90-93, and 97-101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Junkel et al. (US 5,620,633), in view of Hahn et al. (US 5,893,515, IDS), Hutson et al. (US 5,588,564, IDS), in further view of Embleton (of record).

Junkel et al. teaches a potable misting device for sunbathers and others involved in athletic pursuits, which provide a cooling current air with atomized liquid mist, such as water, to combat the elements of heat and dehydration attendant with athletic activities and/or prolonged exposure to the sun. Junkel et al. further disclosed that such type of devices is well-known in the art. See, particularly, the abstract, and column 1, lines 18-63. The device comprises a sealed container, water within the container, and an actuator for spraying a mist of water from the container, See, particularly, the drawing, and columns 4, line 60 bridging to column 5, line 10.

Junkel et al. do not teach expressly to apply the mist to the face of a subject, or the subject is suffering from dry eye.

However, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to direct the fan-mist device to the face, and apply the mist accordingly and enjoy the relief of the dryness, including the dry eye condition, caused by heat and dehydration. Further, it would have been obvious to any one who experienced dry condition, and suffering dry eye to apply a mist to moisturizing the eye and relieve the dryness, particularly, in view the fact that device for producing water mist is common and is with access of normal person. See, e.g., Hahn et al. and Hutson et al. It is a basic instinct for human to use water for relieve of dryness. Any form of water, including mist would have been obvious to a person experiencing dryness. As to claim 92, which recites the particular condition of protein and electrolytes, it is noted the mist generated by the device of Junkel is not likely to wash away those protein and electrolyte since the water is in the form of mist, not a stream. Further, the employment of pressurizing agent in a mist generating device instead of hand generated pressure as disclosed by Junkel et al. is seen to be an obvious variation and is within the skill of artisan. Further, Embleton teaches that liquid administered to the eyes should be not more than 30 μl, over administering of liquid to eyes provide no benefit. (see page 1, lines 5-23). Therefore, one would not try to over flow the eye with excess of water. Further, note the size of droplets in mist is in the range of 2 to 100 micrometers. See "Selected terms in colloid and interface science Aerosols." (of record). Note as to the "dry eye," recited in the claims, absent specific definition in the claims or in the specification, the term is given a broad interpretation. As to the limitation "and wherein the water is sprayed on the surface of eye within a period of 10 seconds (or 5 seconds)," note it would have been obvious to moisturize the eyes with just one or two bolus of the mist as that should have been sufficient to relieve the dryness,

particularly, in view of Embleton's teaching that liquid administered to the eyes should be not more than 30 µl, over administering of liquid to eyes provide no benefit. Regarding the new claims 98-101, it is noted that the claims read on applying a mist toward the face by a device like those disclosed by Junkel, in a short period of time, such as 5 or 10 seconds for controlling the volume (see pages 4-5 of the specification). Since it is known that over flow the eye with excess of water provide no benefit, one would have avoid such overflow by just one or two bolus of the mist.

Response to the Arguments

Applicants' amendments and remarks submitted September 8, 2005 have been fully considered, but are found unpersuasive.

3. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Considering the cited references as a whole, the claimed invention, spraying a mist toward the eyes of a subject suffering dry eyes, would have been obvious to one of ordinary skill in the art.

4. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir.

1992). In this case, the teaching suggestion and motivation are found both in the cited references and in the knowledge generally available to one of ordinary skill in the art. Particularly, moisturizing a dry body part for relieving the dryness is within the knowledge generally available to one of ordinary skill in the art.

5. In response to applicant's argument that the cited prior art do not teach that moisturizing eye with a mist will not washing a way the tear film, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

6. This application contains claims 94-96 drawn to an invention nonelected with traverse in Paper mailed March 17, 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang whose telephone number is (571) 272-0632. The examiner can normally be reached on Monday to Friday from 7:00 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SHENGJUN WANG
PRIMARY EXAMINER

Shengjun Wang
Primary Examiner
Art Unit 1617